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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/594,942	09/28/2006	Paul Omdoll	1414.093	5667
23598 7590 03/01/2010 BOYLE FREDRICKSON S.C. 840 North Plankinton Avenue MILWAUKEE, WI 53203				
EXAMINER RAHIM, AZIM				
ART UNIT 3744		PAPER NUMBER		
NOTIFICATION DATE 03/01/2010		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

docketing@boylefred.com

Office Action Summary

Application No.

10/594,942

Applicant(s)

OMDOLL ET AL.

Examiner

AZIM RAHIM

Art Unit

3744

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 November 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 6, 8-10, 13, 14 and 18-20 is/are pending in the application.
- 4a) Of the above claim(s) 7, 15 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 6, 8-10, 13, 14 and 18-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 September 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Proficiency's Patent Drawing Review (PTO-544)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

1. Newly submitted claims 7, 15 and 21 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claims 7 and 15 are directed to the non-elected species as indicated by the Applicant in the response dated 9/16/2008, and claim 21 includes structure not disclosed in the specification or the drawings directed to the elected species.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 7, 15 and 21 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 8-10, 13, 14 and 18-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor et al. (Taylor, GB 2,098,958).

Regarding claim 8, Taylor discloses a device (referring to figures 1-3) comprising: a body (12) having a base (32), a top (36), wherein the body defines a hollow interior (illustrated

in figure 3); a mouth (34) disposed on the top of the body and providing access to the hollow interior (illustrated in figure 2), wherein the mouth defines an opening (the interior of the mouth), and wherein the opening defines a maximum fill level (inherent); a cover (the combination of cap 30 and portion 14) having a hollow interior defining an expansion volume (see figure 9, the interior of passageways 84 and 90 of this illustration of the cap) that is fluidly connected to the hollow interior of the body when the cover is engaged with the mouth (illustrated in figures 2 and 9), and when liquid only may be removed from the hollow interior of the body when the cover is disengaged from the mouth (illustrated in figure 2); and wherein the hollow area of the cover is at least 10% larger in total volume than that of the hollow interior of body (as illustrated in figures 3 and 9, it depends on how filled the body is with liquid). It is noted that this device is capable of being filled with a liquid and placed in a freezing device. It is noted that the intended use or functional limitations “shaped to provide an enlarged surface area” and “to provide for expansion of liquid from within the body through the mouth and into the hollow area of the cover when said body is filled with a cooling substance and then frozen or otherwise exposed to an environment that causes the cooling substance with which said body is filled to expand” are capable of being performed, and provides no patentable distinction from the prior art.

Regarding claim 9, Taylor discloses that the device cannot be overfilled (see the rejection of claim 8 regarding the expansion volume).

Regarding claim 10, Taylor discloses that the mouth is sized to accommodate ice cubes (this functional limitation is capable of being performed, and provides no patentable distinction from the prior art.)

Regarding claims 13 & 14, Taylor discloses a hanger (upper portion of element 14) being part of the cover (illustrated in figure 2).

Regarding claim 18, Taylor discloses a device (referring to figures 1-3) comprising: a body (the combination of 12 and 14) having a hollow interior (illustrated in figure 3), wherein the body has a lower section (bottom half of portion 14 including body 12) and an upper section (top half of portion 14), wherein the lower section includes a bottom surface (32); a mouth (34) formed in the lower portion (illustrated in figure 2) and extending along a plane parallel to the bottom surface of the lower section (illustrated in figure 2), and providing access to the hollow interior of the body (illustrated in figure 2), wherein when the hollow interior filled with fluid up to the level of the mouth, a portion of a cover (50) will remain unfilled with fluid (see figure 9, the interior of passageways 84 and 90 of this illustration of the cap would not be filled with liquid); and a handle (the hook portion of portion 14) formed in the upper section of the body (illustrated in figure 3), wherein the handle has a generally upright orientation defined orthogonal to the bottom surface (as illustrated in figure 2, the hook section has multiple orientations absent a reference frame). It is noted that the intended use limitation “for supporting the device in a standing position when the device is placed in the vessel” is capable of being performed, and provides no patentable distinction from the prior art.

Regarding claim 19, the functional limitation “wherein during use the lower section of the body is submerged in the warm material and the upper section, including the handle, are in a raised position relative to the warm material so that the handle may be grasped by a hand without

the hand contacting the warm material” is capable of being performed, and provides no patentable distinction from the prior art.

Regarding claim 20, Taylor discloses that the mouth is defined along a plane that is parallel to that of the bottom surface of the lower section (illustrated in figure 2).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claims 1-3 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor.

Regarding claim 1, Taylor discloses a device (referring to figures 1-3) comprising: a body (12) having a base (32) extending along a first horizontal plane (illustrated in figure 2), a wall (22) extending upwardly along a vertical plane from the base (illustrated in figure 2), a top (36) extending along a second horizontal plane (illustrated in figure 2) connected to the wall

above the base (illustrated in figure 2), wherein the base, wall and top define a hollow interior (illustrated in figure 3); a mouth (34) disposed on the top of the body and providing access to the hollow interior (illustrated in figure 2), wherein an opening of the mouth (the interior of the mouth) defines a third horizontal plane (illustrated in figure 2) that is parallel to the first and second horizontal planes (illustrated in figure 2), and wherein the opening defines a maximum fill level (inherent); a cover (the combination of cap 30 and cover 14) having a hollow interior defining an expansion volume (see figure 9, the interior of passageways 84 and 90 of this illustration of the cap) that is fluidly connected to the hollow interior of the body when the cover is engaged with the mouth (illustrated in figures 2 and 9), wherein the expansion volume would not be filled with liquid when the hollow interior is filled to the maximum level (Taylor's device is capable of performing this intended use function), and when liquid only may be removed from the hollow interior of the body when the cover is disengaged from the mouth (illustrated in figure 2). It is noted that the intended use limitation "adapted to close the mouth" is capable of being performed, and provides no patentable distinction from the prior art. However, Taylor fails to disclose a series of sidewalls. The general concept of designing the sidewalls of a liquid container to be square or rectangular falls within the realm of common knowledge as obvious mechanical expedient, and one having ordinary skill in the art would have been motivated to include the use of a series of vertical sidewalls in order to prevent the container from rolling if placed on it's side.

Regarding claim 2, Taylor discloses that the device cannot be overfilled (see the rejection of claim 1 regarding the expansion volume).

Regarding claim 3, Taylor discloses that the mouth is sized to accommodate ice cubes (this functional limitation is capable of being performed, and provides no patentable distinction from the prior art.)

Regarding claim 6, Taylor discloses a hanger (upper portion of element 14).

Response to Arguments

7. Applicant's arguments with respect to claims 1-3, 6, 8-10, 13, 14 and 18-20 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AZIM RAHIM whose telephone number is (571) 270-1998. The examiner can normally be reached on Monday - Thursday 7am - 3pm EST and Friday 7am - 9:30am EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frantz Jules can be reached on 571-272-6681 or Cheryl Tyler at 571-272-4834. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/A. R./
Examiner, Art Unit 3744
2/19/2010

/Frantz F. Jules/
Supervisory Patent Examiner, Art Unit 3744